

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:13-00056

DARIUS LAJUAN KINCANNON

MEMORANDUM OPINION AND ORDER

Defendant Kincannon, pro se, filed his Motion Requesting an Extension to File a § 2255 Petition (ECF No. 52) on February 6, 2015. From a review of the docket sheet for this case, Defendant was sentenced and a judgment entered on March 5, 2014. The defendant did not file an appeal. In his Motion he complains that his counsel failed to provide his case file, preventing him from filing a § 2255 petition.

The Court **DENIES** the Motion. As no petition has yet been filed, the district court has no jurisdiction to consider the Motion. See *Green v. United States*, 260 F.3d 78 (2nd Cir. 2001). Defendant's Motion does not include any allegations sufficient to allow the Court to construe it as a § 2255 petition. Instead, Defendant must file any such petition within the one year limitation period found in 18 U.S.C. § 2255, and then may seek leave to amend or change the claims thereafter.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel and the defendant, the United States Attorney's Office, the United States Probation Office, and the United States Marshals Service.

ENTER: February 12, 2015



ROBERT C. CHAMBERS, CHIEF JUDGE